

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

PHILLIP GAY, #109431,)	
)	
Petitioner,)	
)	
v.)	CASE NO. 2:07-CV-164-WHA
)	
RALPH HOOKS, et al.,)	
)	
Respondents.)	

ORDER

This cause of action is pending before the court on a 28 U.S.C. § 2254 petition for habeas corpus relief filed by Phillip Gay ["Gay"], a state inmate, on February 16, 2007.¹ In this petition, Gay challenges two separate decisions issued by the Circuit Court of Coffee County, Alabama. Specifically, he argues that the trial court improperly denied a motion for reconsideration of sentence filed under *Ala. Code* § 13A-5-9.1 and a subsequent motion challenging this adverse decision. Gay also challenges the sentence imposed upon him in March of 1988 for first degree robbery. Specifically, Gay argues that the trial court improperly enhanced his sentence because the underlying prior convictions utilized for

¹Although the Clerk of this court stamped the present petition "filed" on February 26, 2007, Gay certified that he executed the petition on February 16, 2007. The law is well settled that a pro se inmate's petition is deemed filed the date it is delivered to prison officials for mailing. *Houston v. Lack*, 487 U.S. 266, 271-272 (1988); *Adams v. United States*, 173 F.3d 1339, 1340-41 (11th Cir. 1999); *Garvey v. Vaughn*, 993 F.2d 776, 780 (11th Cir. 1993). "Absent evidence to the contrary in the form of prison logs or other records, [this court] must assume that [the instant petition] was delivered to prison authorities the day [Gay] signed" the related documents. *Washington v. United States*, 243 F.3d 1299, 1301 (11th Cir. 2001). The court therefore considers February 16, 2007 as the date of filing.

enhancement purposes are unconstitutional. In light of the foregoing, the court finds that this habeas action should be separated into two separate civil actions before this court.

Accordingly, the Clerk of this court is hereby DIRECTED to:

1. Open two (2) separate habeas actions.
2. Place the original habeas petition and motion for leave to proceed *in forma pauperis* submitted by inmate Gay in the instant case file.
3. Place a copy of the habeas petition and motion for leave to proceed *in forma pauperis* in the newly opened case.

Done this 28th day of February, 2007.

/s/ Wallace Capel, Jr.
WALLACE CAPEL
UNITED STATES MAGISTRATE JUDGE